

meetings of directors or shareholders. This expanded time period also will avoid the necessity for rescheduling meetings of those boards of directors which regularly meet on a quarterly basis.

Apparently there was some confusion as to whether paragraph (a) (2) of the proposed rule would have required contracts to be amended each time they were continued in order to specify an effective date for such continuance.⁶ This was not the intended result. Therefore, that paragraph has been modified to clarify that the one-year period is to be measured from the date on which the most recent previous annual continuance became effective.

Paragraph (b) provides for prospective application of the rule, so as not to disrupt existing arrangements. Accordingly, the section does not apply to any continuance which was approved not later than 90 days after the date the rule is adopted, provided the contract will expire by its terms not later than 17 months after such adoption date.

It should be further noted that the adoption of § 270.15a-2 does not change our view that in order to comply with sections 15(a) and 15(b) it is usually expected that an investment company whose private shareholders initially approved an investment advisory contract will submit the contract to a vote of the company's public shareholders as soon as possible thereafter.

Attention is directed to the note at the end of the section, which now indicates that while compliance with the rule would be deemed to be in compliance with section 15(a) (2) and section 15(b) (1) of the Act the method specified in the rule is not the exclusive method for complying with the Act. Both sections 15(a) (2) and 15(b) (1) provide that the continuance of a contract must be approved "at least annually." Therefore, § 270.15a-2 does not prohibit votes at more frequent intervals. The procedure specified in the rule is not exclusive. However, if followed, it will be considered prima facie evidence of compliance with sections 15(a) (2) and 15(b) (1) of the Act.

The note also indicates, as it did prior to the addition of the foregoing, that the annual approval of the continuance of a contract in compliance with sections 15(a) and 15(b) would constitute a renewal of such contract for purposes of section 15(c). Accordingly, the requirements of

section 15(c) also must be met on a timely basis.

Commission Action. Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding a new § 270.15a-2 reading as follows:

§ 270.15a-2 Annual continuance of contracts.

(a) For purposes of sections 15(a) and 15(b) of the Act, the continuance of a contract for a period more than two years after the date of its execution shall be deemed to have been specifically approved at least annually by the board of directors or by a vote of a majority of the outstanding voting securities of a registered investment company if such approval occurs:

(1) with respect to the first continuance of a contract, during the 90 days prior to and including the earlier of (i) the date specified in such contract for its termination in the absence of such approval, or (ii) the second anniversary of the date upon which such contract was executed; or

(2) with respect to any subsequent continuance of a contract, during the 90 days prior to and including the first anniversary of the date upon which the most recent previous annual continuance of such contract became effective.

(b) The provisions of paragraph (a) of this section shall not apply to any continuance of a contract which shall have been approved not later than 90 days after the date of adoption of this section, provided that such contract shall expire, by its terms, not later than 17 months from the date of adoption of this section.

NOTE: This section does not establish the exclusive method of complying with the Act. It provides one procedure by which a registered investment company may comply with the applicable provisions of sections 15(a) and 15(b) of the Act; it does not preclude any other appropriate procedure. Any annual continuance of a contract approved in accordance with the provisions of paragraph (a) (1) or (a) (2) of § 270.15a-2 will constitute a renewal of such contract for the purposes of section 15(c) of the Act, and therefore such renewal must be approved by the disinterested directors within the times specified in the section for a continuance.

Section 270.15a-2 is adopted pursuant to the authority granted to the Commission in section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a-38(a)]. The rule shall become effective October 29, 1976 to afford interested persons sufficient time to become familiar with the rule as adopted.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

SEPTEMBER 17, 1976.

[FR Doc.76-27963 Filed 9-23-76;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T. D. 76-268]

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

PART 145—MAIL IMPORTATIONS

Bona Fide Gifts From Members of the Armed Forces Serving in a Combat Zone; Deletion

Pursuant to Pub. L. 89-368, dated March 15, 1966 (80 Stat. 71), item 915.25, which provided that, under certain stated conditions, articles constituting a bona fide gift from a member of the Armed Forces of the United States serving in a combat zone were entitled to entry free of duty, was added to the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202). Subsequently, the Customs Regulations were amended by adding §§ 54.3 and 145.33 (19 CFR 54.3, 145.33) to set forth specific procedures for the duty free entry of articles under item 915.25. While the effective period for item 915.25 was extended by subsequent public laws to December 31, 1973, at which time the effective period for the item expired and it was deleted from the Appendix to the Tariff Schedules, §§ 54.3 and 145.33 of the Customs Regulations were never deleted.

Inasmuch as the effective period for item 915.25 has expired and it has been deleted from the Appendix to the Tariff Schedules, §§ 54.3 and 145.33 of the Customs Regulations should also be deleted. Accordingly, Part 54 of the Customs Regulations (19 CFR Part 54) is amended by deleting § 54.3, and Part 145 of the Customs Regulations (19 CFR Part 145) is amended by deleting § 145.33.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

Because this amendment merely conforms the Customs Regulations to a statutory change, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. This amendment shall become effective September 24, 1976.

VERNON D. ACREE,
Commissioner of Customs.

Approved: September 16, 1976.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.76-28074 Filed 9-23-76;8:45 am]

⁶ Paragraph (a) (2) of proposed § 270.15a-2 was as follows:

(2) With respect to any subsequent continuance of a contract, during the 60 days prior to and including the first anniversary of the date specified in such contract as the effective date of its most recent previous annual continuance (emphasis added).

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regs. No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED (1965—.....)

Subpart T—Health Maintenance Organizations

CONTRACT APPEAL PROCEDURES UNDER TITLE XVIII OF SOCIAL SECURITY ACT

Correction

In FR Doc. 76-27019 appearing at page 39306 in the FEDERAL REGISTER of Wednesday, September 15, 1976 the following corrections should be made:

1. On page 39306, middle column, first paragraph the last sentence should read "They will be effective on and after October 15, 1976".

2. On page 39307, third column, the effective date should read "These amendments shall be effective on and after October 15, 1976".

CHAPTER VI—EMPLOYMENT STANDARDS ADMINISTRATION, DEPARTMENT OF LABOR

SUBCHAPTER B—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, AS AMENDED

PART 725—CLAIMS FOR BLACK LUNG BENEFITS PAYABLE UNDER PART C OF TITLE IV OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT, AS AMENDED

Revision of Regulations

On May 7, 1976 a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (41 FR 18868) proposing to clarify the procedures applicable to the adjudication of claims for black lung benefits predicated upon the death of a miner who died due to or while totally disabled by pneumoconiosis, which are filed more than three years after the date of such miner's death. The Notice sets forth procedures which, in the interest of fairness to parties and judicial economy, permit the summary adjudication of such claims and certain other types of claims under rules similar to those available to a United States district court under Rules 12 and 56 of the Federal Rules of Civil Procedure.

Interested persons were given until June 7, 1976 to submit written comments or objections to the proposed rules (41 FR 20894). One person submitted comments and such comments which are available for public inspection in the office of the Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, D.C. 20211 were given due consideration.

A. As a result of the comments received the following change in the revised rules is made, in addition to a technical correction:

The proposed § 725.473B is deleted in accordance with the suggestion of the commentator for the reason that such proposed section is repetitive and unclear.

B. Certain other recommendations made by the aforementioned commentator have been carefully considered but have not been accepted. The following suggestions were not adopted for the reasons stated:

1. While the commentator agrees that a full evidentiary hearing in the case of a claim which is prima facie untimely filed is a wasteful proceeding which subjects claimants to unnecessary difficulty and expense, it is suggested that each such claimant who is unrepresented by counsel be given an automatic opportunity to present his or her arguments relating only to the issue raised on a motion for summary disposition, in an oral proceeding. This suggestion is rejected on the grounds that to hold an oral proceeding in every case would, in effect, defeat the purposes of these amended rules. All parties would be required to appear at such a proceeding, which would be presided over by an administrative law judge and which would be stenographically reported. In very few, if any, instances would such a proceeding lead to a different result on the claim, while at the same time such proceedings would be costly and time consuming. On the other hand, if a claimant under the amended rules submits written allegations which in the opinion of the administrative law judge may justify further proceedings a party's motion for summary disposition may be denied by the judge and further proceedings may be conducted.

2. It has been recommended that the qualified adoption of the Federal Rules of Civil Procedure for use in the adjudication of black lung claims contained in the amended § 725.460 be made on a trial basis for a period of six months. It is further recommended that at the end of the six month trial period public comment be invited and a re-evaluation be made of the utility of the FRCP in the adjudication of claims. This recommendation is rejected for the reason that the provision in question does little more than restate the terms of Rule 81(a)(6) of the Federal Rules of Civil Procedure. While this suggestion will not, therefore, be incorporated within the text of these amended rules any and all public comments relating to this matter are welcome and will be considered to the extent permissible in future reviews of the Black Lung Program regulations.

Accordingly, 20 CFR Part 725 is revised as set forth below.

Effective date: These rules shall be effective on September 24, 1976.

Signed at Washington, D.C., this 10th day of September 1976.

JOHN C. READ,
Assistant Secretary for
Employment Standards.

1. Paragraph (d) of § 725.124 is amended to read as follows:

§ 725.124 Time limitations for filing claims.

* * * * *

(d) Any claim for benefits in the case of a disabled miner filed under Part C of Title IV of the Act and this Part 725 on the basis of eligibility under § 411(c)(4) of Part B of Title IV of the Act, must be filed in accordance with the requirements of paragraphs (a), (b) and (c) of this section and in addition must be filed within three years from the date of last exposed employment in a coal mine. Any claim for benefits predicated upon the death of a miner in which eligibility for benefits may be established under § 411(c)(4), must be filed in accordance with the requirements of paragraphs (a), (b) and (c) of this section and in addition must be filed within 15 years from the date of last exposed employment in a coal mine.

2. Section 725.451 is revised to read as follows:

§ 725.451 Right to a hearing.

(a) Except as provided in § 725.473A of this part and paragraph (b) of this section, any person affected by proceedings under this part may have a right to a formal hearing concerning any issues of fact or law unresolved in a conference if:

(1) He is a party in interest as defined in § 725.411; and

(2) No final disposition of the case has been achieved in prior proceedings within the period specified in § 725.443.

(b) A full evidentiary hearing need not be conducted if in the opinion of the administrative law judge the case or claim may be determined as a matter of law pursuant to the provisions of this part and an order to such effect is issued by the administrative law judge assigned the case.

3. Section 725.460 is revised to read as follows:

§ 725.460 Hearing procedures—generally.

(a) All hearings shall be attended by the parties or their representatives and such other persons as the administrative law judge deems necessary and proper. The administrative law judge shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters. If the administrative law judge believes that there is relevant and material evidence available which has not been presented at the hearing, he may adjourn the hearing or, at any time prior to the mailing of notice of the decision, reopen the hearing for the receipt of such evidence. The order in which evidence and allegations shall be presented and the procedures at the hearing generally, except as these regulations otherwise expressly provide, shall be at the discretion of the administrative law judge and of such nature as to afford the parties a reasonable opportunity for a fair hearing. The unexcused failure of any party or such party's duly authorized representative to attend a formal hearing shall constitute a waiver of such

party's right to present evidence in respect of the issues to be determined at the hearing.

(b) Except as is otherwise provided in the Act and this part and to the extent that such procedures are consistent with sound administrative practices, the Federal Rules of Civil Procedure shall be applicable to hearings conducted pursuant to this part.

4. A new § 725.743A is added to read as follows:

§ 725.743A Dismissal for failure to file a timely survivor's claims and procedure.

(a) Notwithstanding any other provision of this part, every claim for benefits predicated upon the death of a miner who died due to or while totally disabled by pneumoconiosis must, except as is provided by § 725.124(b), be filed within three years from the date of such miner's death.

(b) Accordingly, a claim for benefits predicated upon the death of a miner may be summarily dismissed on the motion of any party if such claim is filed more than three years after such miner's death.

(c) Any party (see § 725.411) to a claim for benefits may request a dismissal pursuant to this section by written motion or by orally stating such motion on the record at the hearing. A motion for dismissal made pursuant to this section shall be accompanied by the claimant's claim form or such other documents as may be necessary to establish the date of the miner's death and the date on which the claim was filed, if such documentation is necessary. The Secretary of Labor may, in any case, move for the dismissal of a claim pursuant to this section.

(d) Within a reasonable time after the receipt of a motion made pursuant to this section, the Chief Administrative Law Judge or administrative law judge shall either deny the motion or issue an order to show cause why the claim should not be dismissed. Such order to show cause shall specify the grounds upon which the motion to dismiss is predicated and shall instruct the recipient thereof to respond within thirty days from the receipt of such order. A motion to dismiss filed pursuant to this section shall be granted if no response is made during such thirty day period after the receipt of an order to show cause. If a timely response to an order to show cause is received the motion pursuant to which such order was issued shall be granted unless, in the opinion of the Chief Administrative Law Judge, or administrative law judge sufficient grounds are set forth in such response to warrant further proceedings. No oral hearing need be conducted on a motion made pursuant

to this section. Notwithstanding the provisions of § 725.453 any unrepresented party shall be permitted to plead on his or her own behalf in respect of a motion made or order issued pursuant to this section.

(e) Notice of the Chief Administrative Law Judge's or administrative law judge's action taken on a motion made pursuant to this section shall be by order and shall be personally served or served by mail on the parties to the claim at their last known addresses within a reasonable time after the expiration of the thirty day period described in paragraph (d) of this section. Such order shall advise the parties of their right to request review by the Benefits Review Board pursuant to § 725.490.

5. Section 725.474 is revised to read as follows:

§ 725.474 Notice of dismissal and right to request review thereon.

Except as is provided in § 725.473A, notice of the Chief Administrative Law Judge's or administrative law judge's dismissal action shall be given to the parties or mailed to them at their last known addresses. Such notice shall advise the parties of their right to request review by the Benefits Review Board pursuant to § 725.490.

[FR Doc.76-28099 Filed 9-23-76;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Dexamethasone Injection

The Food and Drug Administration approves a new animal drug application (99-607V) filed by Anthony Products Co., 11634 McBean Dr., El Monte, Calif. 91732, proposing safe and effective use of a 2 milligrams-per-milliliter dexamethasone injection for horses when a rapid adrenal glucocorticoid and/or anti-inflammatory effect is indicated. The approval is effective September 24, 1976.

The Commissioner of Food and Drugs is amending Part 522 (21 CFR Part 522) to reflect this approval.

In accordance with § 514.11(e) (2) (ii) (21 CFR 514.11(e) (2) (ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20852, Monday through

Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 522 is amended in § 522.540 by revising paragraph (c) (1) to read as follows:

§ 522.540 Dexamethasone injection.

(c) (1) *Specifications.* The drug is a sterile aqueous solution. Each milliliter contains 2.0 milligrams of dexamethasone or 4.0 milligrams of dexamethasone sodium phosphate (equivalent to 3.0 milligrams of dexamethasone).

Effective date. This amendment shall be effective on September 24, 1976.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: September 20, 1976.

C. D. VAN HOUWELING,
Director,

Bureau of Veterinary Medicine.

[FR Doc.76-27974 Filed 9-23-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 622-5]

PART 402—COOLING WATER INTAKE STRUCTURES

Final Regulations; Correction

Notice is hereby given that the Environmental Protection Agency (EPA) is correcting the improper heading of 40 CFR Part 402 appearing in the notice of final rulemaking for Cooling Water Intake Structures. The affected notice was published in the FEDERAL REGISTER on April 26, 1976 (41 FR 17387).

The title of 40 CFR Part 402 in the April 26, 1976 notice is corrected to read as set forth above.

Dated: September 20, 1976.

ECKARDT C. BECK,
Acting Assistant Administrator
for Water and Hazardous Materials.

[FR Doc.76-28129 Filed 9-23-76;8:45 am]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 175—COLLEGE WORK-STUDY PROGRAM

Correction

In FR Doc. 76-25046, appearing at page 36872, in the issue for Wednesday,

September 1, 1976 make the following corrections:

1. On page 36873, in the third column, in the fifteenth line of the first paragraph, change the word "self-supporting" to read "self-supporting".

2. In the twelfth line of the middle column on page 36876, change the word "regulation" to read "regular".

3. On page 36881, change the fourth line of the middle column which now reads "regulations and in § 144.15 of the pro-" to read "regulations. The statement may be in-".

4. On page 36884, in the eleventh line of § 175.2(p), change the word "source" to "course" and in the 25th line of § 175.2(v) insert "n" after the letter "i".

5. On page 36890, change the second word in § 175.18(b)(2) from "Commission" to "Commissioner".

Title 49—Transportation

CHAPTER I—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-134; Amdts. 171-34, 172-32, 173-100, 174-27, 175-2, 176-2, 177-37, 178-40, 179-17]

PARTS 171-179—HAZARDOUS MATERIALS REGULATIONS

Reissuance; Corrections

Correction

The FR Doc. number of the above-described document, appearing at page 40475 in the issue of Monday, September 20, 1976 (see file line following document on page 40476) should have read "FR Doc. 76-27693".

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination of Critical Habitat for American Crocodile, California Condor, Indiana Bat, and Florida Manatee

The Director, U.S. Fish and Wildlife Service (hereinafter, the "Director" and the "Service," respectively) hereby issues a Rulemaking pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884; hereinafter, the "Act") which determines Critical Habitat for the American Crocodile (*Crocodylus acutus*), California Condor (*Gymnogyps californianus*), Indiana Bat (*Myotis sodalis*), and Florida Manatee (*Trichechus manatus*).

BACKGROUND

In the FEDERAL REGISTER of December 16, 1975 (40 FR 58308-58312) the Service proposed the determination of Critical Habitat for the California Condor, Indiana Bat, Florida Manatee, American Crocodile, Whooping Crane (*Grus americana*), and Snail Darter (*Percina tanasi*). On April 1, 1976 (41 FR 13926-13928) the Service issued a Final Rule-

making determining Critical Habitat for the Snail Darter, but not the other five species. The present Rulemaking deals with four of those other species, but not the Whooping Crane. So much information on the Whooping Crane was received that more time will be required for evaluation and determination of additional measures on that species.

SUMMARY OF COMMENTS

Of the responses received to the Proposed Rulemaking of December 16, 1975, some dealing only with the Snail Darter were discussed in the Final Rulemaking of April 1, 1976, and 35 dealing only with the Whooping Crane will be discussed at a later time. Of the approximately 100 remaining comments, nine simply expressed general support for the Proposal and none indicated general opposition.

With regard to the American Crocodile, the National Park Service recommended that the Critical Habitat zone be expanded to include a portion of Everglades National Park to the west of that delineated in the original Proposal. Since the recommended area is within the Park, the Service considers it proper to include this area as part of the Critical Habitat designated below. The National Audubon Society suggested approximately the same addition as the Park Service, and also several other modifications which remain under consideration.

With regard to the California Condor, one person simply expressed approval of the Proposed Critical Habitat designation, and one expressed disapproval. The California Department of Fish and Game and the Director of the Santa Barbara Museum of Natural History suggested that small additional areas be designated as Critical Habitat, and these areas now are under consideration. Five major conservation organizations expressed concern that the western boundary of the Sespe-Piru Condor Area might have been drawn so as to deliberately exclude the land within a phosphate mining lease application from the Critical Habitat zone. In fact, however, the area of importance to the Condor long was recognized to have approximately the same boundary as that delineated in the Proposal, and there seems no biological justification to extend this boundary into the area of the phosphate lease application. Moreover, a letter from the United States Gypsum Company stated that although the Proposed Critical Habitat zone did not enter the phosphate lease application area, it did include most of an adjacent phosphate prospecting permit area. The Company recommended that the Critical Habitat zone be redrawn to exclude this permit area. The Service, however, considers the original boundary to be appropriate with respect to the biological situation, and no adjustment is being made.

The State of Illinois and two other parties expressed general approval of the Proposed Critical Habitat for the Indiana Bat. The States of Indiana, Kentucky, Missouri and Tennessee; three university professors; and three other

parties all recommended the designation of additional Critical Habitat, either more caves or other components of the habitat of the species. These recommendations are now under consideration and may be expressed, at least in part, in a future proposal.

The State of Florida and approximately 64 other parties expressed approval of the Proposed Critical Habitat for the Florida Manatee. The Director of the Florida State Museum suggested adding an additional area in Florida; and the Georgia Conservancy and Mr. Jerry L. McCollum of the Georgia Department of Natural Resources suggested adding parts of Georgia. These suggested additions now are under consideration.

BASIS FOR DETERMINATION

All of the areas delineated below are considered Critical Habitat because they contain constituent elements necessary to the normal needs or survival of one of the species in question. Specifically for the American Crocodile the delineated area must be considered an absolute minimum amount of Critical Habitat in Florida. The current population of the State, with only 200 to 300 individuals, is concentrated in this area and is dependent upon the included habitat of Florida Bay and associated brackish marshes, swamps, creeks, and canals. All known breeding females, of which there are less than ten in Florida, inhabit and nest in the delineated area.

With regard to the California Condor, the Sespe-Piru, Matilija, Sisquoc-San Rafael, and Hi Mountain-Beartrap Condor areas, as described below, are considered critical for nesting and related year-long activity. The Mt. Pinos and Blue Ridge Condor areas, as described below, are considered critical for roosting. The Tejon Ranch, Kern County rangelands, and Tulare County rangelands, as described below, are considered critical for feeding and related activities. The Tejon Ranch is very important because it contains the only significant feeding habitat remaining in close proximity to the Sespe-Piru Condor nesting area. In most cases Condor feeding habitat is not so restricted as nesting and roosting sites, and only certain portions of the areas described below are needed at any one time. Because, however, the location of food is directly related to both Condor distribution and reproductive success, substantial areas of open range, with adequate food, and limited development and disturbance, would have to be preserved in each delineated area in order to maintain the species.

With regard to the Indiana Bat, approximately 75 percent of the known population hibernates at the sites designated below. The bats are entirely dependent on the shelter provided by these caves and mines during the winter. Their loss or subjection to excessive disturbance or modification would lead to the near or total extinction of the species.

With respect to the Florida Manatee, the areas delineated below contain the largest concentrations in the United States, and are the only areas that pres-

ently can be defined as having major dependent populations. The Crystal River and its King's Bay headwaters form one of the largest natural warm water resources for Manatees. Up to 60 Manatees possibly representing six to ten percent of the total population of the species in the United States, utilize this refugium during cold weather periods. The Little Manatee, Manatee, Myakka, and Peace rivers, and Charlotte Harbor all support large Manatee concentrations. Manatees also utilize the Caloosahatchee River and associated coastal areas. The warm water discharge of the Florida Power and Light Company Ft. Meyers power plant into the Orange River, on the south bank of the Caloosahatchee River at Tice, is known to attract as many as 75 Manatees during cold periods. The area off the coast of Collier and Monroe Counties, southwestern Florida, is the center of a large, but uncounted Manatee population. This population is at least partially resident and is dependent on the extensive local growths of *Thalassia* and *Diplanthera* as a primary food resource. Concentrations of as many as 75 Manatees are observed in Whitewater Bay. The waterway formed by Card, Barnes, Blackwater, and Buttonwood sounds may constitute the Manatee's essential thoroughfare between Miami-Biscayne Bay and the lower Keys and Florida Bay. Seaward movement along the upper Keys is very rare. Biscayne Bay, with its adjoining waterways is of central importance to the large Manatee populations of southeastern Florida. Abundant food resources exist in the area, and the warm water flow from the Florida Power and Light Company Miami River plant provides an important refugium. Lake Worth supports a large Manatee population year-round, and also serves as a warm water refugium for additional wintering Manatees. The outfall from the Florida Power and Light Company River plant supports up to 75 Manatees during cold weather. The Indian and Banana rivers may contain the largest Manatee population in Florida. These areas provide warm, quiet waters and abundant food resources. The St. Johns River also provides ample food resources to a significant Manatee population, and several of its spring-fed tributaries provide warm water refugia during cold spells. In Lake Monroe, two power plants provide warm water outfalls which are used by Manatees during cold periods. The Intracoastal Waterway from the St. Marys River to Highway A1A is a major concentration area and thoroughfare for Manatees.

It is emphasized that the areas delineated below may not represent the entire Critical Habitat of the species named. This Rulemaking in no way precludes the Service from at any time proposing additions or modifications to the designated Critical Habitat. It now seems likely that more Critical Habitat will be proposed for at least the California Condor, Indiana Bat, and Florida Manatee in the near future.

EFFECTS OF THE RULEMAKING

The effects of this determination are involved primarily with Section 7 of the Act, which states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

An interpretation of the term "Critical Habitat" was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of April 22, 1975 (40 FR 17764-17765). Some of the major points of that interpretation are: (1) Critical Habitat could be the entire habitat of a species, or any portion thereof, if any constituent element is necessary to the normal needs or survival of that species; (2) actions by a Federal agency affecting Critical Habitat of a species would not conform with Section 7 if such actions might be expected to result in a reduction in the numbers or distribution of that species of sufficient magnitude to place the species in further jeopardy, or restrict the potential and reasonable recovery of that species; and (3) there may be many kinds of actions which can be carried out within the Critical Habitat of a species which would not be expected to adversely affect that species.

This last point has not been well understood by some persons. There has been widespread and erroneous belief that a Critical Habitat designation is something akin to establishment of a wilderness area or wildlife refuge, and automatically closes an area to most human uses. Actually, a Critical Habitat designation applies only to Federal agencies, and is a notification to such agencies that their responsibilities pursuant to Section 7 of the Act are applicable in a certain area.

FINAL RULEMAKING

The Director has considered all comments and data submitted in response to the proposed determination of Critical Habitat for the American Crocodile, California Condor, Indiana Bat, and Florida Manatee. The Director also has considered other information received by the Service both prior to and subsequent to the publication of the Proposal in the FEDERAL REGISTER of December 16, 1975. Based on this review, the areas delineated below are determined to be Critical Habitat for the American Crocodile, California Condor, Indiana Bat, and Florida Manatee. (Since the time when

proposed Critical Habitat Regulations for these species were published in the FEDERAL REGISTER (December 16, 1975), additional Subparts have been proposed for Part 17. Accordingly, the Section numbers in the Final Regulations have been changed to those shown below.)

These Final Regulations will become effective on October 22, 1976.

Dated: September 14, 1976.

LYNN A. GREENWALT,
Director, Fish and
Wildlife Service.

Accordingly, 50 CFR Part 17 is hereby amended as set forth below:

1. The Table of Sections for Subpart F of Part 17 is amended to read as follows:

Subpart F—Critical Habitat	
Sec.	
17.60	[Reserved]
17.61	Snail Darter.
17.62	American Crocodile.
17.63	[Reserved]
17.64	California Condor.
17.65	Indiana Bat.
17.66	Florida Manatee.

2. A new § 17.62 is added reading as follows:

§ 17.62 American crocodile.

(a) The following area (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species) is critical habitat for the American crocodile (*Crocodylus acutus*): All land and water within the following boundary in Florida: beginning at the easternmost tip of Turkey Point, Dade County, on the coast of Biscayne Bay; thence southeastward along a straight line to Christmas Point at the southernmost tip of Elliott Key; thence southwestward along a line following the shores of the Atlantic Ocean side of Old Rhodes Key, Palo Alto Key, Angelfish Key, Key Largo, Plantation Key, Windley Key, Upper Matecumbe Key, Lower Matecumbe Key, and Long Key, to the westernmost tip of Long Key; thence northwestward along a straight line to the westernmost tip of Middle Cape; thence northward along the shore of the Gulf of Mexico to the north side of the mouth of Little Sable Creek; thence eastward along a straight line to the northernmost point of Nine-Mile Pond; thence northeastward along a straight line to the point of beginning.

(b) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of this critical habitat area.

3. A new § 17.63 is added and reserved as follows:

§ 17.63 [Reserved]

4. A new § 17.64 is added reading as follows:

§ 17.64 California condor.

(a) The following areas (exclusive of those existing man-made structures or

settlements which are not necessary to the normal needs or survival of the species) in California are critical habitat for the California condor (*Gymnogyps californianus*).

(1) *Sespe-Piru Condor Area*: an area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, in Ventura and Los Angeles Counties, with the following components (San Bernardino Meridian): Sespe Condor Sanctuary, as delineated by Public Land Order 695 (January 1951); T4N R20W Sec. 2, 5-10, N $\frac{1}{2}$ Sec. 11; T4N R21W Sec. 1-3, 10-12, N $\frac{1}{4}$ Sec. 13, N $\frac{1}{4}$ Sec. 14, N $\frac{1}{4}$ Sec. 15; T5N R18W Sec. 4-9, 18, 19, 30, 31, N $\frac{1}{2}$ Sec. 3, N $\frac{1}{2}$ Sec. 17; T5N R21W Sec. 1-4, 9-16, 21-28, 33-36; T6N R18W Sec. 7-11, 14-23, 26-35; T6N R19W Sec. 7-36; T6N R20W Sec. 8-36; T6N R21W Sec. 13-36; T6N R22W Sec. 3-26, 35, 36; T6N R23W Sec. 1-3, 10-14, 24, N $\frac{1}{2}$ Sec. 23; T7N R22W Sec. 31; T7N R23W Sec. 34-36.

(2) *Matilija Condor Area*: an area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, in Ventura and Santa Barbara Counties, with the following components (San Bernardino Meridian): T5N R24W W $\frac{1}{2}$ Sec. 3, Sec. 4-11, 14, 15, N $\frac{1}{2}$ Sec. 16, N $\frac{1}{4}$ Sec. 17; T5N R25W E $\frac{1}{2}$ Sec. 1, NE $\frac{1}{4}$ Sec. 12; T5 $\frac{1}{2}$ N R24W Sec. 31-34; T6N R24W S $\frac{1}{2}$ Sec. 32, S $\frac{1}{2}$ Sec. 33, S $\frac{1}{2}$ Sec. 34.

(3) *Sisquoc-San Rafael Condor Area*: an area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, Santa Barbara County, with the following components (San Bernardino Meridian): T6N R26W Sec. 5, 6; T6N R27W Sec. 1, 2; T7N R26W Sec. 5-8, 17-20, 29-32; T7N R27W Sec. 1-14, 23-26, 35, 36; T7N R28W Sec. 1, 2, 11, 12; T8N R26W Sec. 19-22, 27-34; T8N R27W Sec. 19-36.

(4) *Ht Mountain-Beartrap Condor Areas*: areas of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain in San Luis Obispo County, with the following components (Mt. Diablo Meridian): T30S R16E Sec. 13, 14, 23-26, SE $\frac{1}{4}$ Sec. 11, S $\frac{1}{2}$ Sec. 12; T30S R17E Sec. 17-20, 29, 30; T31S R14E Sec. 1, 2, 11, 12, E $\frac{1}{2}$ Sec. 3, E $\frac{1}{2}$ Sec. 10, N $\frac{1}{2}$ Sec. 14, N $\frac{1}{2}$ Sec. 13; T31S R15E W $\frac{1}{2}$ Sec. 6, W $\frac{1}{2}$ Sec. 7, NW $\frac{1}{4}$ Sec. 18.

(5) *Mt. Pinos Condor Area*: An area of land, water, and airspace in Ventura and Kern Counties, with the following components (San Bernardino Meridian): T8N R21W W $\frac{1}{2}$ Sec. 5, Sec. 6 N $\frac{1}{2}$ Sec. 7, NW $\frac{1}{4}$ Sec. 8; T8N R22W Sec. 1, 2, E $\frac{1}{2}$ Sec. 3, NE $\frac{1}{4}$ Sec. 10, N $\frac{1}{2}$ Sec. 11, N $\frac{1}{2}$ Sec. 12; T9N R21W Sec. 31, 32, W $\frac{1}{2}$ Sec. 33; T9N R22 W E $\frac{1}{2}$ Sec. 35, Sec. 36.

(6) *Blue Ridge Condor Area*: An area of land, water, and airspace in Tulare County, with the following components (Mt. Diablo Meridian): T19S R29E Sec. 5-9, 15-22, 27-30.

(7) *Tejon Ranch*: an area of land, water, and airspace in Kern County, with the following components (San Bernardino Meridian): R16W T10N, R17W T10N, R17W T11N, R18W T9N, R18W T10N, R19W T10N.

(8) *Kern County rangelands*: an area of land, water, and airspace in Kern County between California State Highway 65 and the western boundary of Sequoia National Forest, with the following components (Mt. Diablo Meridian): R29E T25S, R29E T26S, R30E T25S, R30E T26S.

(9) *Tulare County rangelands*: an area of land, water, and airspace in Tulare County between California State Highway 65, State Highway 198, and the western boundary of Sequoia National Forest, with the following components (Mt. Diablo Meridian): R28E T18S (all sections); R28E T19S (all sections); R28E T20S (all sections); R28E T21S Sec. 1-18; R29E T20S (all sections); R29E T21S Sec. 1-18.

(b) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of these critical habitat areas.

5. A new § 17.65 is added reading as follows:

§ 17.65 Indiana bat.

(a) The following areas (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species) are critical habitat for the Indiana bat (*Myotis sodalis*):

(1) *Illinois*. The Blackball Mine, La Salle County.

(2) *Indiana*. Big Wyandotte Cave, Crawford County; Ray's Cave, Greene County.

(3) *Kentucky*. Bat Cave, Carter County; Coach Cave, Edmonson County.

(4) *Missouri*. Cave 021, Crawford County; Cave 009, Franklin County; Cave 017, Franklin County; Pilot Knob Mine, Iron County; Bat Cave, Shannon County; Cave 029, Washington County [numbers assigned by Division of Ecological Services, U.S. Fish and Wildlife Service, Region 6].

(5) *Tennessee*. White Oak Blowhole Cave, Blount County.

(6) *West Virginia*. Hellhole Cave, Pendleton County.

(b) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of these critical habitat areas.

6. A new § 17.66 is added reading as follows:

§ 17.66 Florida manatee.

(a) The following areas (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species) in Florida are critical habitat for the Florida manatee (*Trichechus manatus*): Crystal River and its headwaters known as King's Bay, Citrus County; the Little Manatee River downstream from the U.S. Highway 301 bridge, Hillsborough County; the Manatee River

downstream from the Lake Manatee Dam, Manatee County; the Myakka River downstream from Myakka River State Park, Sarasota and Charlotte Counties; the Peace River downstream from the Florida State Highway 760 bridge, De Soto and Charlotte Counties; Charlotte Harbor north of the Charlotte-Lee county line, Charlotte County; Caloosahatchee River downstream from the Florida State Highway 31 bridge, Lee County; all U.S. territorial waters adjoining the coast and islands of Lee County; all U.S. territorial waters adjoining the coast and islands and all connected bays, estuaries, and rivers from Gordon's Pass, near Naples, Collier County, southward to and including White-water Bay, Monroe County; all waters of Card, Barnes, Blackwater, Little Blackwater, Manatee, and Buttonwood sounds between Key Largo, Monroe County, and the mainland of Dade County; Biscayne Bay, and all adjoining and connected lakes, rivers, canals, and waterways from the southern tip of Key Biscayne northward to and including Maule Lake, Dade County; all of Lake Worth, from its northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway A1A southward to its southernmost point immediately north of the town of Boynton Beach, Palm Beach County; the Loxahatchee River and its headwaters, Martin and West Palm Beach Counties; that section of the intracoastal waterway from the town of Sewalls Point, Martin County to Jupiter Inlet, Palm Beach County; the entire inland section of water known as the Indian River, from its northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway 3, Volusia County, southward to its southernmost point near the town of Sewalls Point, Martin County, and the entire inland section of water known as the Banana River and all waterways between the Indian and Banana rivers, Brevard County; the St. Johns River, including Lake George, and including Blue Springs and Silver Glen Springs from their points of origin to their confluences with the St. Johns River; that section of the Intracoastal Waterway from its confluence with the St. Marys River on the Georgia-Florida border to the Florida State Highway A1A bridge south of Coastal City, Nassau and Duval Counties.

(b) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of the critical habitat area.

[FR Doc.76-28066 Filed 9-23-76; 8:45 am]

PART 32—HUNTING

De Soto National Wildlife Refuge, Iowa

The following special regulation is issued and is effective on September 24, 1976.